




FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

March 11, 1999

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
MICHIGAN STATE REPUBLICAN COMMITTEE

Attached please find a copy of the final audit report and related documents on Michigan State Republican Committee which was approved by the Commission on February 3, 1999.

Informational copies of the report have been received by all parties involved and the report may be released to the public

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1999

Mr. William H. Gnodtke, Treasurer
Michigan Republican State Committee
2121 East Grand River
Lansing, MI 48912

Dear Mr. Gnodtke:

Attached please find the Final Audit Report on the Michigan Republican State Committee. The Commission approved the report on February 3, 1999.

The Commission approved final audit report and related materials will be placed on the public record on March 2, 1999. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220. Any questions you have related to the matters covered during the audit or in the report should be directed to Leroy Clay or Tom Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Costa".

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

cc: Eric E. Doster

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CHRONOLOGY

MICHIGAN REPUBLICAN STATE COMMITTEE

Audit Fieldwork	01/16/96 - 02/23/96
Interim Audit Report to the Committee	03/28/97
Response Received to the Interim Audit Report	05/31/97
Final Audit Report Approved	02/03/99

22-07-025-3972

REPORT OF THE AUDIT DIVISION
ON
MICHIGAN STATE REPUBLICAN
COMMITTEE

Approved February 3, 1999



FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.

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**REPORT OF THE AUDIT DIVISION
ON THE
MICHIGAN REPUBLICAN STATE COMMITTEE**

EXECUTIVE SUMMARY

The Michigan Republican State Committee (the Committee) registered with the Comptroller General of the United States on April 17, 1972.

The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings of the audit were presented to the Committee at an exit conference held at the completion of fieldwork on February 23, 1996 and later, in an interim audit report. The Committee's responses to those findings are included in the final audit report.

The following is an overview of the findings contained in the final audit report.

JOINT FEDERAL AND NON-FEDERAL ACTIVITIES — 11 CFR § 100.8(a)(1), 11 CFR § 106.5(g)(1), 11 CFR § 104.10(b)(4), 11 CFR § 106.5(g)(2)(iii). The Committee maintains an account entitled "Michigan Republican State Comm Administrative Account" (the Account). According to the Committee, funds expended from the Account do not impact federal, state, or local elections, therefore, it considers such transactions to be non-campaign related; receipt and disbursement transactions are not included in its federal or state disclosure reports. The Audit staff identified approximately \$230,000 in expenses subject to allocation between the Committee's federal and non-federal account. These expenses were administrative in nature and associated with State Convention, State Committee Meetings, RNC Meetings/Conferences, as well as, the day to day operations of the Committee. The interim audit report recommended that the Committee reimburse the Account for its share of allocable expenses paid from the Account and file memo Schedules H4 disclosing the shared expenses.

In response to the interim audit report, the Committee contended that only a small amount of expenses were reimbursable by the federal account; evidence of reimbursement was not provided. Further, memo Schedules H4 disclosing such shared expenses were not filed.

The final audit report concluded that the Committee should reimburse the Account \$50,241 in payment of the federal account's share of allocable expenses paid from the Account and file memo Schedules H4 disclosing the shared expenses.

SHARED EXPENSES PAID FROM THE NON-FEDERAL CHECKING ACCOUNT — 11 CFR § 106.5(g)(1). Our review of a non-federal checking account identified \$42,992 in payments made directly to vendors for shared administrative expenses, the federal share of which

was \$9,544. Although no reimbursement by the federal account was necessary in this instance due to prior federal account overpayments, these payments should have been disclosed.

The Committee stated in its response to the interim audit report that it accepts the finding and recommendation. However, to date it has not filed memo Schedules H4 disclosing the shared administrative expenses.

APPARENT CORPORATE CONTRIBUTIONS — 2 USC § 441b(a), 11 CFR §114.9(d), 11 CFR §§ 100.7(a)(1)(iii)(A) and (B). The Committee made disbursements totaling \$8,841 to approximately 72 corporations for the use of telephones for get-out-the-vote activities from October 29, 1992 through November 3, 1992. The Committee paid each corporation \$1.50 per telephone per hour. The interim audit report noted that the payments to the corporations did not appear to represent the normal and usual charge for the use of telephones and facilities nor did it appear that the payments were made within a commercially reasonable time.

In its response, the Committee provided affidavits and/or letters from 28 of the approximately 72 corporations which represented, except for one entity, that each corporation had been reimbursed in full for the use of telephones and facilities and that the reimbursement had been made within a commercially reasonable time. In addition, the Committee stated it had made a good faith effort to calculate the normal and usual charge for the use of telephones and facilities and to make payment within a commercially reasonable time. The information provided by the Committee was not deemed sufficient to resolve these issues.

DISCLOSURE IRREGULARITIES - 2 USC § 434(b), 11 CFR §§ 104.10(b)(4), 106.5(g)(1) and (3), & 102.17(iii)(8)(B). Reports filed by the Committee contained errors or omissions for which amending action was recommended in the interim audit report. For instance, the Committee did not disclose on Schedule H3 \$177,464 in transfers from its non-federal checking account to its federal payroll account nor did it report payroll disbursements totaling \$177,464 on Schedule H4. In a similar vein, \$445,857 in payments to individuals were disclosed as lump sum payments with the listed payee "Payroll Account" rather than disclosing the identification of each individual who received a disbursement. Regarding receipts, the Committee did not report contribution information, involving \$72,439 in gross proceeds relative to a joint fundraising event. Finally, a comparison of the Committee's reported activity to its bank account records revealed material misstatements occurred in the balances/dollar totals for cash, total receipts and total disbursements disclosed on the Committee's 1993 and 1994 reports.

Concerning all of the above irregularities noted in the interim audit report, the Committee in its response stated that it accepted the findings and recommendations, but did not file any of the amending action requested.



**REPORT OF THE AUDIT DIVISION
ON THE
MICHIGAN REPUBLICAN STATE COMMITTEE**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the Michigan Republican State Committee (the Committee), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. AUDIT COVERAGE

The audit covered the period January 1, 1993 through December 31, 1994. During this period, the Committee reported a beginning cash balance of \$126,495; total receipts for the period of \$7,441,120; total disbursements for the period of \$7,391,757; and an ending cash balance of \$175,858.

C. CAMPAIGN ORGANIZATION

The Committee registered with the Comptroller General of the United States as the Michigan Republican State Committee on April 17, 1972. The Treasurer of the Committee for the period covered by the audit was Ronald D. Dahlke. The current Treasurer is William H. Gnodtke. The Committee maintains its headquarters in Lansing, Michigan.

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To manage its financial activity, the Committee maintained a number of checking, saving and certificate of deposit accounts. Committee's receipts were composed of contributions from individuals, political committees, transfers from party committees, refunds/rebates, interest and transfers from its non-federal account.

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations;
2. The receipt of contributions from prohibited sources (see Finding II.C.);
3. Proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.F.);
4. Proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.E.);
5. Proper disclosure of campaign debts and obligations;
6. The accuracy of total reported receipts, disbursements and cash balances as compared to bank records (see Finding II.G.);
7. Adequate recordkeeping of campaign transactions;
8. Proper reporting and funding of allocable expenses (see Findings II.A., B. and D.); and,
9. Other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. JOINT FEDERAL AND NON-FEDERAL ACTIVITIES

Section 100.8 (a)(1) of Title 11 of the Code of Federal Regulations states the term expenditure includes payments, gifts or other things of value. A purchase,

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payment, distribution, loan (except for a loan made in accordance with 11 CFR §100.8(b)(12), advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office is an expenditure.

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations states, in part, committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose paying the allocable expenses of joint federal and non-federal activities; or pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations states, in part, a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or separate allocation account in payment for a joint federal and non-federal expense or activity.

Section 106.5(g)(2)(iii) of Title 11 of the Code of Federal Regulations states any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

Background

Our review encompassed activity related to eighteen bank accounts; twelve of which were federal accounts and six were considered non-federal accounts. As provided at 11 CFR §106.5(g)(1)(ii) and 102.5(a)(1), allocation of expenses between federal and non-federal activities by party committees, the Committee maintained two accounts from which expenses it viewed as allocable between federal and non-federal activities were paid. One account paid all payroll expenses, while the second account paid other shared expenses.

The Committee maintains an account entitled "Michigan Republican State Comm Administrative Account" (the Account). According to the Committee, funds expended from the Account do not impact federal, state, or local elections, therefore, it considers such transactions to be non-campaign related. Further, receipt and disbursement transactions are not included in its federal or state disclosure reports. The Account was open during the entire audit period (1993/1994). The balance on January 1, 1993 was \$13,911. During the period covered by the audit, \$681,569 was deposited into and approximately \$672,560 expended from the Account. The majority of the funds deposited was from corporations.

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It should be noted that the State of Michigan does not permit corporate or labor union contributions to be used for non-federal elections. However, on August 21, 1979, the Michigan Secretary of State issued a declaratory ruling concerning corporate expenditures at a state political party convention. A corporation proposed spending funds for expenses related to a state convention. The expenses included but were not limited to hotel rooms, food, beverages, telephone and travel, and were to be made for the purpose of influencing the decisions of the delegates to the convention with respect to the adoption of certain resolutions and the election of individuals to office within the state party. In part, the declaratory ruling stated that since none of the offices at stake at this particular convention were public offices and none of the resolutions to be adopted were ballot questions, the expenditures in question were not prohibited and also did not need to be reported or recorded as expenditures under the Act (reference to the state of Michigan non-federal election law).

A Manual For Political Party Committees published by the Michigan Department of State Bureau of Elections, April 1990, commonly referred to as the "green book," at page 14 states political party committees may accept funds from an incorporated source if the corporation clearly designates the funds for the committee's administrative expenses. These funds must be deposited in a separate account maintained by the committee solely for administrative purposes. Finally, another manual published by the Michigan Department of State Bureau of Elections in February 1990, for independent political and ballot question committees, at page 8, states a Ballot Question Committee may receive corporate funds or be entirely funded by a corporation. At page 40 of this manual, it states a corporation is allowed to spend corporate funds to support or oppose ballot questions. The corporation must register a Ballot Question Committee within 10 calendar days after it spends \$500 or more in a calendar year to support or oppose ballot issues.

According to Committee records, expenses paid from the Account related to the annual Michigan Republican State Convention, Michigan Republican State Committee Meetings, conferences, and Republican National Committee State Chair Conferences. Such expenses included but were not limited to air travel, reimbursements for mileage, hotel costs, food, beverage, entertainment, construction costs, materials, supplies and invitations, etc.

From the Account the Committee also repaid a \$100,000 bank loan it received for reapportionment activities and issued checks totaling \$220,000 to the Michigan Reapportionment Trust Fund (MRTF).¹ The Committee paid various expenses

¹ According to the Committee, the MRTF is a non-profit corporation, established in 1989. It is governed by a board of directors. Its purpose is to make expenditures to influence the reapportionment process. Advisory Opinions 1981-35, 1982-14 (requested by the Michigan Republican State Committee), 1982-37 and 1990-23 address receipts and expenditures relative to reapportionment activities. The Commission has maintained that funds received and disbursed

associated with the purchase of its headquarters, paid a telemarketing firm to conduct surveys, which appeared to relate to non-federal elections, and paid another telemarketing firm to make calls to encourage voters to support a ballot position. A Commission imposed civil penalty (\$12,500) was also paid from the Account.

1. Expenditures Apparently Related To Shared Federal And Non-Federal Activities

The Audit staff analyzed all disbursements made from the Account, including a review of all documentation made available. It appears that many of the disbursements do in fact relate to federal and non-federal elections including many shared administrative expenses. The Audit staff identified disbursements, totaling \$66,525, for administrative expenses. These disbursements were associated with a victory party (November 1992 election), building repairs, audits of all bank accounts (federal, non-federal, the Account), salary payments to the individual who raised funds for the Account, reimbursement of expenses to the Party's general counsel (copying, postage, delivery [including deliveries to the Federal Election Commission], phone, telecopying, etc.) and holiday cards/gifts to contributors. Such disbursements would be normally allocated between the Committee's federal and non-federal account, with the Committee either paying the full amount and then receiving a reimbursement from the non-federal account for its share of administrative expenses or transferring its share of the expenses to an allocation account, with the non-federal account doing the same; payment would then be made from the allocation account.

Further, the Audit staff identified an additional \$164,389 in expenses which appeared to require allocation. For the most part, the expenses were associated with the annual state convention, various state committee meetings, RNC chair meetings and conferences. Such expenses included travel, mileage, hotel costs, construction, materials, supplies and invitations. At the Audit staff's request, the Committee provided agendas for most of the events discussed above.

With respect to the state conventions, RNC chair meetings, conferences and state committee meetings, it appears that campaign-related components (federal and non-federal) existed. For example, from the Account the Committee paid for the printing of a four page leaflet entitled "What has Democrat Leadership Given Michigan?" The handout featured articles on a U.S. Senator and President Clinton and was distributed at the 1993 State Convention. Appearing on the last page is a notice, indicating that the handout was paid for by the Michigan Republican State Committee. Further, according to the agenda, a national committeeman and/or a committeewoman addressed most State Committee Meetings. The agendas provided did not specify the topics covered.

from a reapportionment account are not contributions or expenditures and thus not subject to disclosure requirements, limitations or prohibitions of the Act or Regulations.

Further, the Audit staff noted that in September 1995 a presidential candidate addressed the Michigan Republican Mackinac Conference Breakfast. It appears that at the very least the expenses noted above (administrative - \$66,525; state conventions and committee meeting/conferences - \$164,389) relate to shared federal and non-federal activities. As such, \$51,263 $[(\$66,525 + 164,389) \times .222]$ ² in expenses required payment by the federal account and \$179,651 $[(\$66,525 + 164,389) - 51,263]$ in expenses required payment by a non-federal account(s). As explained previously, all the expenses in question were paid from the Account which the Committee maintains does not impact federal, state or local elections. None of these expenses were reported on FEC Schedules H4.

2. Expenses Related To State Ballot Question And State Focus Group Surveys

In May 1994, the Committee paid (from the Account) a telemarketing firm \$2,529 to make Prop A calls. These were calls made to voters to support a ballot question. The aforementioned declaratory ruling stated, in part, that corporate funds could be used for the convention in question since no resolutions that were adopted were ballot questions. Further, the green book at page 40 states if a corporation spends more than \$500 in a calendar year to support or oppose a ballot question, the corporation must register a ballot question committee.

During the period, January 6, 1994 through May 25, 1994, the Account paid a vendor \$17,668 to conduct focus group surveys. The surveys were entitled Teach Michigan Statewide, Michigan Education Reform Focus Groups and Teach Michigan Teacher Study. The various surveyed groups included, teachers, registered voters/parents and taxpayers. Although there is mention of a candidate for federal office the surveys appear to be a non-federal effort since the surveys primarily address education reform in the state of Michigan.

In the interim audit report, the Audit staff recommended that the Committee:

- demonstrate that the expenditures originating from the Account (\$230,914) were not expenditures as defined at 11 CFR §100.8(a); or,
- file memo Schedules H4 disclosing the shared expenditures which originated from the Account (\$230,914); and,
- using funds from its federal account(s) reimburse the Account \$51,263 and

² The allocation percentage for administrative expenses is 22.2%. The percentage is the ratio of federal offices to total federal and non-federal offices expected to be on the ballot in the next federal general election held in the state.

provide evidence of such reimbursement.³

- Should the Committee successfully demonstrate that the expenses paid from the Account do not relate to joint federal and non-federal activities then no reimbursement to the Account is required.

As part of its response to the recommendations contained in the interim audit report, the Committee included a discussion of various Advisory Opinions issued by the Commission, as well as guidance received by the Committee concerning the application of Michigan state campaign finance law. The Committee correctly pointed out that the Commission concluded⁴ that the influencing of the reapportionment decisions of a state legislature, although a political process, is not considered election-influencing activity subject the requirements of the Act. Also referenced was Advisory Opinion 1993-9 which addressed the Committee's proposal to establish a building fund, maintained as a "separate segregated" account into which only designated contributions would be deposited. Finally, the Committee included a reference to Advisory Opinion 1983-37 in which the Commission determined that the Massachusetts Democratic State Committee could establish a fund that would not be subject the Act's limitations, prohibitions, or disclosure requirements. The monies in this fund could be used only for the purpose of defraying legal costs of defending legal actions brought by candidates against the Massachusetts Democratic State Committee and would have to be maintained separately from funds used for federal elections.

Using the above cited opinions to show that circumstances could exist whereby a political committee may establish a "separate segregated" account to fund certain types of activity not considered election-influencing activity subject to the requirements of the Act, the Committee contended that, with the exception of certain minor items, "[t]he disbursements from the Account are not made for the purpose of influencing any election for Federal office." The response then addressed specific types of expenses paid from the Account in an effort to demonstrate that the payments questioned in the interim audit report were not subject to the requirements of the Act.

Conventions, Meetings, And Conferences

The Audit staff identified \$164,389 in expenses associated with the annual state convention, various state committee meetings, Republican National Committee chair meetings and conferences which appeared to require allocation between the Committee's federal and non-federal accounts as administrative expenses. The Committee, in its response, asserted that based on prior Commission determinations the payments for expenses related to the state convention, meetings and other conferences questioned by the Audit staff were not expenditures pursuant to the Act.⁵ Advisory

³ Corrective action pursuant to Michigan state law is not within the scope of this report.

⁴ Advisory Opinions 1982-14, 1982-35.

⁵ The Committee did acknowledge that \$216.62 in expenses paid from the Account

Opinion 1978-46 is cited, in part, as are Advisory Opinions 1982-35, 1983-37 and 1986-6⁶ within the narrative portion of the response.

The Committee contended, based on its reading of the advisory opinions cited, that unless there is fundraising related to a campaign for federal office or any communication expressly advocating the election or defeat of a clearly identified candidate for federal office, the activity and attendant expenses cannot be regarded as for the purpose of influencing a federal election. The Commission in several advisory opinions referred to these factors; however, the Commission has also indicated that the absence of solicitations for contributions or express advocacy regarding candidates will not preclude a determination that activity is "campaign-related." See Advisory Opinions 1992-6, 1992-5, 1990-5, 1988-27, 1986-37, 1986-26, 1984-13 and 1983-12.

Nearly all the advisory opinions cited by the Committee were issued by the Commission prior to the effective date (January 1, 1991) of the Commission's regulations for allocating expenses that jointly benefit both federal and non-federal candidates and elections.⁷ These regulations provide for allocation of expenses by political party committees making disbursements for administrative expenses, fundraising, exempt activities, or generic voter drives in connection with both federal and non-federal elections. More specifically, party committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for administrative expenses not attributable to a clearly identified candidate, including rent, utilities, supplies, and salaries. Advisory Opinion 1993-21. The Commission's Explanation and Justification contains the following guidance regarding administrative expenses:

"Please note that all administrative expenses must be allocated between federal and non-federal accounts, if incurred by a committee that makes disbursements in connection with both federal and non-federal elections, and that chooses to pay any portion of such disbursements from its non-federal account."

It seems the \$164,389 in expenses questioned in the interim audit report do fall into the general category of administrative expenses and therefore cannot be viewed as not subject to the requirements of the Act.

representing the cost of a handout entitled "What has Democrat Leadership Given Michigan?" was mistakenly paid for from the Account.

⁶ Also cited in footnotes were Advisory Opinions 1992-5, 1981-37, 1977-54, 1980-22.

⁷ Advisory Opinions 1992-5 (candidate's participation in a series of public affairs forums) and 1993-9 (preemption of Michigan State law with respect to the prohibitions on corporate donations to the Michigan Republican State Committee's building fund) were issued after 1/1/91.

Audit And Legal Expenses

As to the audit expenses questioned in the interim audit report (\$26,423), the Committee contended that payment of such expenses are subject to the Act only in the case where they (1) directly further the election of any designated candidate for federal office, or (2) assist the political committee in its compliance with the Act. According to the Committee, "the purpose of the audits is ... to verify to the officers and members of the MRSC that the financial statements are appropriately stated and that the MRSC staff is conforming with generally accepted accounting principles." The Committee then concluded, there is no basis to designate payments from the Account for these audit expenses as subject to the Act.

Regarding legal expenses questioned by the Audit staff (\$1,927), the Committee restated the two factors directly above and added a third - are associated with compliance or audit matters under the Act. The Committee cited examples of legal expenses which the Commission determined as not subject to the requirements of the Act, such as legal defense to a charge of slander (Advisory Opinion 1981-13).⁸

Again, in the Audit staff's opinion, the Committee's reliance on the advisory opinions which it cites, is misplaced. Expenses related to an audit of Committee accounts, both federal and non-federal, fall clearly into the administrative expense category.

The Committee's General Counsel related that he reviewed the reimbursed legal expenses questioned by the Audit staff and to the best of his knowledge an insignificant amount of reimbursed expenses could qualify as 'expenditures,' which he estimated to have been, at most, 5% or \$96. The remainder, \$1,831, in reimbursed expenses did not concern federal candidates or the Act. No documentation beyond an affidavit signed by the Committee's General Counsel was provided.

While it is true the Commission, in advisory opinions, has concluded that certain types of activity and the legal expenses related thereto are not subject to the Act's recordkeeping, reporting and other requirements, the type of activity was clearly defined (e.g., a possible denial of access to the primary ballot of the state of Massachusetts involving a party rule, AO 1982-35). Moreover, for such activity a segregated fund would have to be established and maintained apart from other political committee funds. For example in Advisory Opinion 1983-37, the Commission concluded that "[t]o the extent monies in the fund will be used only for the purposes described, and will be maintained separately from funds used for Federal elections, the Party's legal expense fund would not be subject to the Act's limitations ..."

Given the expenses at issue, totaling \$28,350, are not identified or

⁸ Also cited were Advisory Opinions 1980-4 and 1979-37.

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documented as being for a purpose indistinguishable from any approved by the Commission, the Audit staff views the expenses as administrative expenses subject to the requirements of the Act and Commission regulations.

Holiday Cards, Flowers, Gifts, And Staff Social Outings

The Committee asserted that expenses for holiday cards, flowers, gifts and staff social outings do not constitute expenditures under the Act. The reasoning for this position apparently is that there was no electioneering message or fundraising solicitation associated with the holiday cards or gifts, the flowers were not sent for the purpose of influencing any federal election, and no fundraising or electioneering activities occurred at the staff social outings.⁹

As explained above, party committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for administrative expenses not attributable to a clearly identified candidate, including rent, utilities, supplies, and salaries. Advisory Opinion 1993-21. The types of administrative expenses cited are illustrative and cannot be viewed as inclusive. The above expenses, in the Audit staff's opinion, are classified properly as administrative expenses.

Fundraising For The Account

The Committee conceded that since certain disbursements from the Account were mistakenly made and constitute expenditures under the Act, a certain percentage of the fundraiser's salary should be reimbursed from the Committee's federal account to the Account. The Committee is willing to concede payments in error of \$1,608.50 which according to its calculation represents 0.2% or about \$16 of the fundraiser's salary and is reimbursable by the Committee's federal account.

The fundraiser's salary should not be allocated based on a ratio of federal expenditures to all expenditures from the Account. For example, it does not appear that funds received from the Michigan Reapportionment Fund (for Reapportionment expenses) and the various national party committees resulted from fundraising efforts. As a result, the Audit staff's considers the entire amount of the fundraiser's salary (\$7,580) a shared administrative expense. These fundraising expenses, as well as all other allocable expenses discussed above should not have been paid from the Account. As previously stated, the Commission's regulations at 11 CFR 106.5(g)(1) provide two methods by which a party committee may defray the cost of allocable expenses. Party committees that have established separate federal and non-federal accounts may establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities; or pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal

⁹ Advisory Opinion 1981-26 is cited as support for the Committee's position.

account to it federal account solely to cover the non-federal share of the allocable expense.

As stated, it is the opinion of the Audit staff that expenditures for activities such as independent reviews of committee accounts, staff salaries, staff outings, holiday cards, gifts, flowers, etc., clearly fall within the general category of "administrative expenses" as noted at 11 CFR §106.5 (a)(2)(i).

Summary

Based on our analysis of the information provided by the Committee in its response to the interim audit report, the Audit staff recalculated the amount of expenses subject to allocation between the Committee's federal and non-federal accounts. The revised total of allocable expenses disbursed from the Account during the audit period was \$226,309 (\$66,525 +164,389 - 4,605¹⁰). As discussed above "Fundraising for the Account," the Committee did not defray these allocable expenses in accordance with 11 CFR 106.5(g)(1).

For purposes of the analysis and conclusions reached in this report, the expenses paid from the Account (1) directly related to the purchase or construction of an office facility, (2) directly related to influencing reapportionment decisions of a state legislature, (3) directly related to legal actions approved by the Commission as not subject to the Act, and (4) other identified costs directly and completely related to non-federal activities are not considered as allocable expenses or expenses otherwise related to influencing federal elections. However, the payments for each type of expense enumerated directly above at items (1) through (3) should have been made from a "separate segregated" account and the funds used in payment thereof should have not been commingled with funds used to pay allocable expenses. Further, the Committee should revise its procedures to insure that payments for expenses noted in items (1) through (3) above conform to the requirements set forth by the Commission. See e.g., Advisory Opinions 1993-09, 1982-14 and 1981-13.

As to expenses paid from the Account which are viewed as allocable expenses, the Committee's federal account should reimbursement the Account \$50,241 (\$226,309 x .222) in payment of the federal account's share of allocable expenses paid from the Account and file memo Schedules H4 disclosing the shared expenses.

It should be noted that even though the Committee agreed that certain identified expenditures should have been paid by the federal account, the Committee did not provide evidence that the federal account reimbursed the Account nor

¹⁰ Represents expenses not related to shared activity incorrectly included in \$230,914 cited, see page 7, interim report recommendations.

has it filed memo Schedules H4 disclosing such shared expenses.¹¹

B. SHARED EXPENSES PAID FROM THE NON-FEDERAL CHECKING ACCOUNT

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations states, in part, committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities; or pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

In addition to the shared expenses paid from the Account discussed in Finding A. above, our review of the Michigan Republican State Committee State Account, a non-federal checking account, identified \$42,992, in payments made directly to vendors for shared administrative expenses. Funds expended from this account to pay shared administrative expenses were not reported. The majority of the expenditures related to the state convention held in August, 1994. The federal share of these expenses is \$9,544 ($\$42,992 \times .222$). Based on our testing of shared activities originating from the federal accounts, it was determined that the Committee overpaid its portion of such expenditures in the amount of \$41,978, therefore, no reimbursement by the federal account is necessary.

Although these transactions were not handled in accordance with the regulations, nevertheless, these payments should be reported as memo entries on Schedule H4 (Joint Federal/Non-Federal Activity Schedule).

A schedule of shared administrative expenses originating from the non-federal account was provided to the Committee

In the Interim Audit Report, the Audit staff recommended that, the Committee: demonstrate the expenses in question are not allocable between the federal and non-federal accounts; or, file memo Schedules H4 disclosing the shared administrative expenses which originated from the non-federal checking account (\$42,992).

In response to the recommendation, the Committee stated that it accepts the findings and recommendations. However, to date the Committee has not filed memo Schedules H4 disclosing the shared administrative expenses.¹²

¹¹ Our review of the Committee reports and statements filed through January 8, 1999 did not identify any reimbursements or amending actions related to the transactions at issue.

¹² See footnote 11.

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C. APPARENT CORPORATE CONTRIBUTIONS

Section 441b(a) of Title 2 of the United States Code states that it is unlawful for any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or for any corporation whatever, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors are to be voted for, or for any candidate, political committee or other person knowingly to accept or receive any contribution prohibited by this section.

Section 114.9(d) of Title 11 of the Code of Federal Regulations states that persons who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities.

Sections 100.7(a)(1)(iii)(A) and (B) state, in part, that the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. Usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; and usual and normal charge for any services means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

The Committee disclosed on Schedules H4 in its 1993 midyear report disbursements totaling \$8,841 that were categorized as exempt activity. In response to a Reports Analysis Division request for additional information, the Committee stated that the disbursements were related to 1992 phone banks, staffed by volunteers, on behalf of the Republican Party Presidential nominee.

Our review indicated that Committee volunteers used telephones located at approximately 72 corporations for get-out-the-vote activities from October 29, 1992 through November 3, 1992. The script used by the volunteers reminded voters that Tuesday was election day and requested them to support President George Bush, an unnamed State Representative and the rest of the Republican ticket. It then asked "Can President Bush and the rest of the Republican ticket count on your support?"

The Committee stated it was not invoiced for payment by any of the corporations. As a result, payments for the use of telephones and facilities were not made until February 22, 1993, at which time, the Committee paid each corporation \$1.50 per telephone per hour. The Committee's calculation of \$1.50 per telephone per hour was based on various components. The components used in the calculation included local access for each phone line, office space and utilities. However, the Committee did not

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provide documentation justifying its calculation.

The interim audit report recommended that the Committee:

- provide invoices from the various corporate entities detailing its charges for the services extended to the Committee including a breakdown for use of phones, facilities and other equipment used. The documentation should include components considered by the corporations when providing similar services to other entities; and,
- demonstrate that the payments to the various corporate entities were made in a commercially reasonable time, to include documentation that evidences the standard billing practices of the various corporate entities.

In response to the interim audit report, the Committee provided affidavits and/or letters from 28 of the approximately 72 corporations that provided telephones and facilities for get-out-the-vote activities. The corporations responded to a letter from the Committee which requested a statement explaining: "(1) whether or not your company was fully reimbursed for costs associated with these telephone calls; (2) whether or not this reimbursement was within a 'commercially reasonable time' (i.e. what are your company's standard billing practices); and (3) whether or not our reimbursement to your company covered any secondary costs such as electricity, heat, or water associated with the operation of the phone bank from your business."

Except for one entity, the corporations responded in the affirmative to each item contained in the Committee's letter. One response indicated the reimbursement did not cover any secondary costs and was based on the \$1.50 per phone per hour formula.

In addition, the Committee stated in its response that it has made a good faith effort to calculate the normal and usual charge for the use of such telephones and facilities, and to make payment within a commercially reasonable time. It further stated that, if the Audit Division determines that the Committee did not pay the normal and usual charge for the use of telephones and facilities, and did not make payments within a commercially reasonable time, the Committee respectfully requests specific guidance in order to comply with this requirement in the future.

The Audit Division is not in a position to calculate the normal and usual charge for use of corporate facilities, nor should the calculation be done by the Committee. Based on the wide range of telephone services made available to business entities and fluctuation in the cost to leased office space and other associated services, the corporations are in the best position to calculate the normal and usual charge for use of its facilities. Further, the corporations should have invoiced the Committee, however, it is apparent they did not. Reimbursements did not occur until approximately 3 ½ months later.

As a result, it is the opinion of the Audit staff that the payments to the corporations do not appear to represent the normal and usual charge for the use of telephones and facilities. Further, no documentation has been made available which demonstrates that the payments were made within a commercially reasonable time.

D. UNREPORTED RECEIPTS AND DISBURSEMENTS

Sections 106.5(g)(1) and (3) of Title 11 of the Code of Federal Regulations state, in part, committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities; or pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense. A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

The Committee did not disclose on Schedule H3 transfers from its non-federal checking account to its federal payroll account. These transfers totaled \$34,913 in 1993 and \$142,551 in 1994. In addition, the Committee did not report payroll disbursements, totaling \$177,464 (1993 - \$34,913 and 1994 - \$142,551), on Schedule H4. The payments were made to committee personnel who had worked on non-federal election polling. However, since the payments were made from a Committee account they require disclosure on Schedules H4.

At the exit conference, the Committee agreed to amend its 1993 and 1994 disclosure reports to disclose the unreported transfers and the related payroll disbursements.

The Audit staff recommended that the Committee file amended Schedules H3 and Schedules H4 for calendar years 1993 and 1994 to disclose the unreported transfers and the related payroll disbursements made to Committee personnel.

In response to the recommendation, the Committee states that it accepts the findings and recommendations. However, the Committee has not filed amended Schedules H3 and Schedules H4 for calendar years 1993 and 1994 to disclose the unreported transfers and the related payroll disbursements.¹³

E. ITEMIZATION OF DISBURSEMENTS

Section 434(b)(5)(A) of Title 2 of the United States Code states that each

¹³ See footnote 11.

report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that a political committee that pays allocable expenses shall also report each disbursement from its federal account or its separate allocation account in payment for a joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement.

The Committee did not itemize correctly payments, totaling \$445,857, to individuals from its payroll account for the period April 6, 1994 through November 16, 1994. The Committee disclosed payroll as lump sum payments on Schedule H4, designating the payee as "Payroll Account". The Committee could not provide an explanation for the error.

At the Exit Conference the Committee stated that it would amend its 1994 disclosure reports to correctly itemize the payments noted above.

The Audit staff recommended that the Committee file amended Schedules H4 disclosing the correct payees, dates and amounts for payments made from its payroll account during the period April 6, 1994 through November 16, 1994.

Although the Committee stated in its response that it accepts the findings and recommendations, it has not filed amended Schedules H4 disclosing the correct payees, dates and amounts for payments made from its payroll account.¹⁴

F. ITEMIZATION OF RECEIPTS

Section 434(b)(3)(A) of Title 2 of the United States Code states that each report under this section shall disclose the identification of each person who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution.

Section 102.17(iii)(8)(B) of Title 11 of the Code of Federal Regulations states that after distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A

¹⁴ See footnote 11.

itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

The Committee participated in a joint fundraiser with Abraham For Senate called the "Governor's Birthday Bash." The terms of the joint fundraising agreement stipulated that the contributions were to be allocated: Twenty-five percent - Michigan Republican State Committee federal account; Seventy-five percent - Abraham for Senate Committee. The agreement further stipulated that any contribution not permitted under the Federal Election Campaign Act of 1971 will be deposited in the Michigan Republican State Committee non-federal account.

The Committee reported as transfers-in from the Governor's Birthday Bash (net) receipts totaling \$60,900. However, the Committee did not file memo Schedule A's itemizing contributions from contributors representing its share of the gross receipts (\$72,439).

Committee officials agreed to file amended reports to correct the errors noted above.

The Audit staff recommended that the Committee file memo Schedule A's itemizing its share of gross contributions.

The Committee stated in its response that it accepts the findings and recommendations, but to date has not filed memo Schedule A's itemizing its share of gross contributions.¹⁵

G. MISSTATEMENT OF FINANCIAL ACTIVITY

Sections 434(b)(1) (2) and (4) of Title 2 of the United States Code state, in part, that a political committee shall disclose the amount of cash on hand at the beginning of the reporting period and the total amount of all receipts and all disbursements for the reporting period and calendar year.

The Audit staff's reconciliation of the Committee's reported activity to its bank activity revealed that material misstatements occurred with respect to reports filed covering calendar years 1993 and 1994.

For calendar year 1993, beginning cash on hand was overstated by more than \$73,659. The Committee was unable to provide an explanation for the discrepancy. Receipts were understated by \$34,802 primarily due to not reporting transfers from the Committee's non-federal checking account to the federal payroll account. Disbursements were understated by \$35,055 due to unreported salary payments made from the Committee's federal payroll account. Ending cash on hand was overstated by \$73,912.

¹⁵ See footnote 11.

With respect to 1994, beginning cash on hand was overstated by \$73,912, carried forward from 1993. Receipts were understated by \$146,703 primarily due to unreported transfers from the non-federal checking account to the federal payroll account. Similarly, disbursements were understated by \$145,649 mainly due to unreported salary payments made to individuals from the federal payroll account. Ending cash on hand for 1994 was overstated by \$72,857.

The Committee was provided schedules of the above reporting errors at the exit conference. Committee officials agreed to file a comprehensive amendment for 1993 and 1994 to rectify the errors.

The Audit staff recommended that the Committee file a comprehensive amendment for 1993 and 1994 to correct the errors noted above.

In response to the recommendation, the Committee stated that it accepts the findings and recommendations, however, to date no comprehensive amendment for 1993 and 1994 has been filed.¹⁶

¹⁶ See footnote 11.

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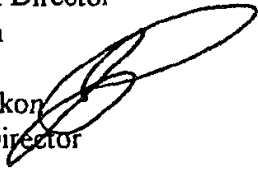


FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463


October 14, 1998

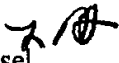
MEMORANDUM


TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon 
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman 
Associate General Counsel

Lorenzo Holloway 
Assistant General Counsel

Jamila I. Wyatt 
Law Clerk

SUBJECT: Proposed Final Audit Report on the Michigan Republican State
Committee (LRA #509)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report on the Michigan Republican State Committee ("the Committee") submitted to this Office on September 4, 1998. The following memorandum summarizes our comments on the proposed Report.¹ We concur with the findings in the proposed Report which are not discussed

¹ We recommend that the Commission consider this document in open session since the proposed Final Audit Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

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separately in the following memorandum. If you have any questions concerning our comments, please contact Jamila Wyatt, the law clerk assigned to this audit.

II. JOINT FEDERAL AND NON-FEDERAL ACTIVITIES (II.A.)

The cover memorandum to the proposed Final Audit Report requests this Office to specifically address the issue of whether the promulgation of the regulations on the Allocations of Candidate and Committee Activities affected the conclusions reached by the Commission in some of the Advisory Opinions issued prior to the January 1, 1991 effective date of the regulations. Explanation and Justification for 11 C.F.R. Parts 102, 104, and 106, 55 Fed. Reg. 26058 (June 26, 1990).

Political committees that engage in activity in connection with federal and non-federal elections must establish either 1) a separate federal account for its federal activity or 2) establish a political committee that receives only contributions that are subject to prohibitions and limitations of the Federal Election Campaign Act ("the FECA"). 11 C.F.R. §§ 102.5(a)(1)(i) and (ii). If the committee establishes a separate federal account, only funds subject to the prohibitions and limitations of the FECA may be deposited into the separate federal account. 11 C.F.R. § 102.5(a)(1)(i). Furthermore, all disbursements in connection with federal election activity must be made from the separate federal account. *Id.*

Political committees that have separate federal and non-federal accounts under 11 C.F.R. § 102.5(a)(1)(i) must allocate expenses in accordance with the Commission's regulations at 11 C.F.R. § 106.5. 11 C.F.R. § 106.5(a)(1). The Commission's regulations provide "detailed instructions as to how [committees] are to allocate their administrative expenses and cost for combined federal and non-federal activity." Explanation and Justification for 11 C.F.R. § 106.5, 55 Fed. Reg. 26061 (June 26, 1990). For the purpose of payment of expenses, the Commission's regulations state that committees that have separate federal and non-federal accounts shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities; or pay the entire amount of an allocable expense from its federal account and transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense. 11 C.F.R. § 106.5(g)(1).²

The proposed Final Audit Report states that the Committee is engaged in both federal and non-federal election activity. The Committee maintains an account entitled "Michigan Republican State Comm. Administrative Account" ("the Account"). The proposed Final Audit Report notes that \$226,309 in allocable expenses were disbursed from the

² The regulations further state that a political committee that pays allocable expenses shall also report each disbursement from its federal account or separate allocation account in payment for a joint federal and non-federal expense or activity. 11 C.F.R. §104.10(b)(4).

Account. The Committee's response to the Interim Audit Report states that the Account is a "non-campaign" account because the funds expended from the Account are not spent for the purpose of influencing any election for Federal office or for the purpose of influencing the nomination or election of a state candidate.³ The Committee identifies certain disbursements from the Account that it believes were not made in connection with federal election activity. However, the Committee concedes that the Account disbursed \$6,811.41 related to shared federal and non-federal activity.

The Committee relies on various advisory opinions issued by the Commission to support the establishment of the separate non-campaign account. The Committee cites Advisory Opinion 1982-14, in which the Commission determined that receipts and disbursements from the reapportionment account would not constitute contributions or expenditures, and thus are not subject to the FECA's disclosure requirements; Advisory Opinion 1983-37, where the Commission determined that in certain circumstances, monies for legal defense funds may be maintained separately and would not be subject to the FECA limitations, prohibitions, or disclosure requirements; and Advisory Opinion 1993-9, where the Commission held that creating a building fund is not done for the purpose of influencing an election, and that a separate account for the building fund would not be subject to the disclosure requirements so long as it was segregated from any federal and non-federal expenditures.

The Office of General Counsel believes that the legal principle in the advisory opinions that committees can establish and maintain accounts that do not influence federal elections is not applicable to the situation in this case.⁴ The Committee concedes that it made disbursements from the Account in connection with a federal election. Therefore, the Committee must follow the Commission's rules at 11 C.F.R. § 106.5 for allocating expenses between the federal and non-federal accounts. 11 C.F.R. § 106.5(a)(1); *see* Advisory Opinion 1983-21 (once an account is established that does not influence federal elections, such as a legal defense fund, it must be used for that purpose). Once the Committee makes disbursements from the Account in connection with a federal election, it is no longer an account that does not influence federal elections. Rather, it is account for which the Committee must follow the "detailed instructions as to how [it] must allocate [its] administrative expenses and costs for combined federal and non-federal activity." Explanation and Justification for 11 C.F.R. § 106.5, 55 Fed. Reg. 26061 (June 26, 1990). Since the

³ According to the proposed Report, the majority of the funds deposited into the Account were from corporations.

⁴ Since the advisory opinions are not applicable to this situation, we do not believe that this case raises the issue of whether the advisory opinions were affected by the Commission's promulgation of the regulations on Allocation of Candidate and Committee Activities. The advisory opinions address the issue of whether accounts that do not influence federal elections can be established. The regulations address the question of allocation once federal election activity has been established. *Compare* AO 1993-9 (building fund account) with 11 C.F.R. § 102.5(a)(1) (political committees that engage in federal and non-federal activity) and 11 C.F.R. § 106.5(a)(1)(i).

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Committee made disbursements from the Account in connection with federal activity it cannot ignore the Commission's detailed instructions on allocating the expenses. This Office concurs with the general proposition that the Committee must follow the rules for allocating expenses between federal and non-federal activities. However, the rules require the allocation of certain types of expenditures (i.e. administrative expenses, and the direct cost of fundraising). 11 C.F.R. § 106.5(a)(2). Therefore, we recommend that the Audit Report discuss the basis for characterizing certain expenses as allocable expenses.

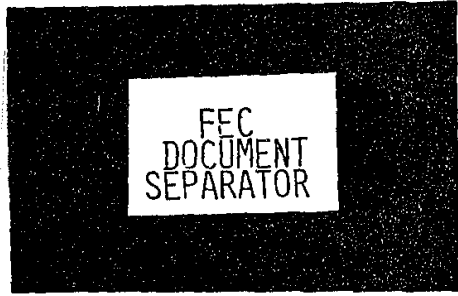
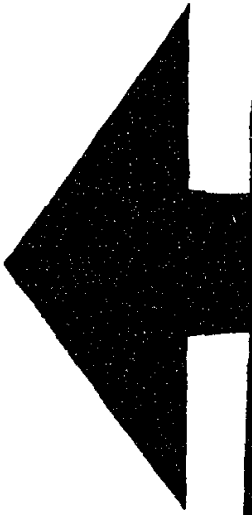
This Office believes that the analysis used in section II.A.2 of the proposed Final Audit Report that addresses expenses related to state ballot question and state focus group surveys is equally applicable in some respects to section II.A.1 of the Report which deals with expenditures apparently related to shared federal and non-federal activities. This Office recommends that the analysis in the two sections be reconciled. The Audit Division may revise the proposed Final Audit Report to include a general section that discusses the same issues that are raised in both sections of the Report.

III. CORPORATE CONTRIBUTIONS (I.C.)

The Audit Division takes the position that corporations are best suited to calculate the normal and usual charge for use of corporate facilities, rather than the Audit Division or the Committee. While we agree that the Committee may not be in the best position to calculate the usual charge for use of corporate facilities, this Office believes that the Committee has the responsibility of calculating the normal and usual charge for use of corporate facilities and to make payment within a commercially reasonable time. Committees may examine the fair market value of the services being provided, as well as the current industry custom to determine the normal and usual charge for use of corporate facilities. 11 C.F.R. § 100.7(a)(1)(iii)(B).

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